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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

VALENTI, ANDREA M

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 04/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/914,793

Applicant(s)

VAN TOL ET AL.

Examiner

Andrea M. Valenti

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11, 12, 14 is/are rejected.
- 7) ☒ Claim(s) 10, 13, 15-20, 22 and 23 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Upon further review of the remarks presented in the Appeal Brief filed on 9 February 2004, examiner has reopened prosecution and has withdrawn finality previously present in Office Action Paper No. 17 in view of the following new grounds of rejection.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-9 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,026,650 to Miller.

Regarding Claim 1 and 3-9, Miller teaches a holder for transport with at least one carrier (Miller #11) and a series of clamping elements (#12 and 20a) which are fixed to the carrier and which are each adapted to clamp a plant cutting (Fig. 3), wherein the clamping elements are fixed to the carrier such that plant cuttings clamped in the clamping elements extend substantially parallel to each other, and the center of each of the clamping elements is situated substantially in the same central plane (Fig.1) and wherein the central plane extends at a right angle to the plant cuttings; and inherently the holder transports whole plant cuttings placed in the holder.

Regarding Claim 11, Miller teaches the clamping elements each comprise at least two parts (#12 and 20a), at least one of which is connected resiliently with the carrier (#20a).

Claims 1, 3-8, 11, 12, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Japanese Patent JP401267180A to Tashiro.

Regarding Claims 1 and 6, Tashiro teaches a holder for transport with at least one carrier (Fig. 11 #55) and a series of clamping elements (Fig. 11 #31 and Fig. 8) which are fixed to the carrier and which are each adapted to clamp a plant cutting (Fig. 8 #32), wherein the clamping elements are fixed to the carrier such that plant cuttings clamped in the clamping elements extend substantially parallel to each other, and the center of each of the clamping elements is situated substantially in the same central plane; and the holder transports the whole plant cuttings placed in the holder (Tashiro English abstract) and the central plane extending at a right angle to the plant cuttings.

Regarding Claim 3, Tashiro teaches the carrier extends as a strip (Fig. 11 #55) and that the clamping elements (#31) are fixed to the carrier at regular mutual distances

Regarding Claim 4, Tashiro discloses that the clamping elements (#31) are each fixed on the same side of the carrier (Fig. 11 #31).

Regarding Claim 5, Tashiro discloses that the mutual distance between the clamping elements on one side of the carrier is greater than or equal to the mutual distance between the center of the clamping elements so that two carriers with their clamping elements **can be** placed between each other (Fig. 11).

Regarding Claim 7, Tashiro discloses the carrier is divided into substantially rigid pieces (Fig. 11 #51 and 55), which are couple in mutually flexible manner.

Regarding Claim 8, Tashiro teaches the carrier has been made **substantially** from rigid material (Fig. 11).

Regarding Claim 11, Tashiro teaches the clamping elements (Fig. 8) each have at least two parts, at least one of which is connected resiliently to the carrier (Fig. 11 #31).

Regarding Claim 12, Tashiro discloses that the parts each take substantially the form of a semi-cylindrical surface, wherein both parts are connected to the carrier such that in the non-loaded situation both parts are separated on either side by a narrow gap (Fig. 8 the top of the cylinder clamps the stem and the bottom of the cylinder is the second part).

Regarding Claim 21, Tashiro teaches applicant's broad claim language that each of the parts of the clamping elements are connected to the carrier for tilting on an axis extending substantially at a right angle to the plane of the carrier (Fig. 11 #31 and Fig. 13 #31).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,026,650 to Miller.

Regarding Claim 24, Miller is silent on the holder being manufactured by injection molding or thermoforming of plastic. However, it would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since the modification is merely an engineering design choice of a selection of a known manufacturing method selected to achieve a durable product in an efficient manner and does not present a patentably distinct limitation.

Regarding Claims 25 and 26, Miller teaches the carrier is manufactured from flat material in which at least three lips (Miller Fig. 3 #12 and 11) at the position of each clamping element (Miller #20a), which lips are adapted to fixedly clamp the plant. Miller is silent on the holder being manufactured out of paper or plastic and is punch formed. However, it would have been obvious to one of ordinary skill in the art to modify the teachings of Miller since the modification is merely the selection of a known material for intended use in order to reduce manufacturing costs.

Claims 9, 14, and 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent JP401267180A to Tashiro.

Regarding Claim 9, Tashiro is silent on the clamping elements have been made from softer material than the carrier. However, it would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since the

modification is merely an engineering design choice selection of a known-material for intended use for durable and lightweight design for efficient shipping.

Regarding Claim 14, Tashiro is silent on the inner wall of both parts of the clamping elements together have a substantially oval section. However, it would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since the modification is merely a change in size/shape for an efficient use of space and for aesthetic design appeal and does not present a patentably distinct limitation.

Regarding Claim 24, Tahsiro is silent on the holder being manufactured by injection molding or thermoforming of plastic. However, it would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since the modification is merely an engineering design choice of a selection of a known manufacturing method selected to achieve a durable product in an efficient manner and does not present a patentably distinct limitation.

Regarding Claims 25 and 26, Tashiro teaches the carrier is manufactured from flat material in which at least three lips (Fig. 11 #55 and 54) at the position of each clamping element (Fig. 11 #31), which lips are adapted to fixedly clamp the plant. Tashiro is silent on the holder being manufactured out of paper or plastic and is punch formed. However, it would have been obvious to one of ordinary skill in the art to modify the teachings of Tashiro since the modification is merely the selection of a known material for intended use in order to reduce manufacturing costs.

Allowable Subject Matter

Claims 10, 13, 15-20, 22, and 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed 9 February 2004 have been fully considered but they are not persuasive.

Applicant has not distinguished within the text of the claim limitations that the plant cutting is contained exclusively within the holder and that the holder is not used in any combination i.e. a pot or vase. Perhaps applicant should provide the negative limitation that the plant cutting has "no support in the ground or soil". Regarding the teachings presented by Miller, examiner maintains that Miller does present all of the structural limitations claimed by Applicant. For example, applicant does not claim that the bottom of the plant cutting is freely suspended, i.e. that there is nothing surrounding it. A plant cutting could be in a vase, in the ground, or it could be in a plant pot with soil (as the result of a propagation method) in which case the teachings of Miller are applicable and the device could be use for transport. The holder would move simultaneously with the pot (i.e. long rectangular pot such as a window box) with the end posts of Miller contained within the same pot that the plant is planted. Clamping can be defined as holding something securely or to fasten and element #20a of Miller does in fact clamp the plant cutting. Applicant has not presented structural limitations that distinguish applicant's invention over the teachings of the prior art.


Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: U.S. Patent No. 3,259,236 and U.S. Patent No. 3,177,617.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Andrea M. Valenti
Examiner
Art Unit 3643

30 March 2004


Peter M. Poon
Supervisory Patent Examiner
Technology Center 3600